

SF [Public Defender's Office]

IMPACT OF PROPOSITION 8 ON SENTENCING AND
DISPOSITIONS IN SAN FRANCISCO
SUPERIOR COURTS

Background

On June 8, 1982 the California voters approved Proposition 8, the Victim's Bill of Rights. This initiative was designed to make it easier to convict more defendants accused of crimes and to send them to prison for longer periods of time. The initiative purported to outlaw plea bargaining in designated serious felonies; it provided for enhanced prison sentences for those convicted of designated felonies who had previously been convicted of a designated felony; it make it easier for prosecutors to admit evidence harmful to the defendants.

Before Proposition 8's approval and during the campaign, it was feared that its enactment would have heavy cost impact because more defendants would go to prison for longer terms. It was also feared that the ban on plea bargaining would cause delays in the courts, with more defendants going to trial.

Monitoring

The San Francisco Public Defender has been monitoring the effect of Proposition 8 on felony sentencing and on felony workload. This monitoring was done by comparing the outcome of Public Defender cases during the six month interval after the passage of Proposition 8 (July 1 - December 31, 1982)^{1/} with that same period in 1981 (July 1 - December 31, 1981)^{2/}. Comparisons were also made of 108 private counsel cases closed during each of those intervals. The comparison of Public Defender cases -- a total of 1,823 -- represented the totality of Public Defender closed during those two time periods. The comparison of private counsel cases represented a sampling of cases, selected 15% of all private counsel cases closed during the two time periods in San Francisco Superior Courts.

Other statistical measures that were available were used and will be indicated herein.

^{1/}
hereinafter JD 82

^{2/}
hereinafter JD 81

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Conclusions

Although Proposition 8 was intended as a "get-tough on criminals" law, it is having little or no effect on the work of the Superior Court in San Francisco. If anything, felony sentencing seems to be more lenient than before enactment. And although Proposition 8's critics claimed it would bring the courts to a halt, that is not happening either. Here are some conclusion to date that are borne out by our statistical survey.

(1) Proposition 8 is not, at this time, causing more defendants to be sentenced to prison. In fact, the number and the percentage of persons being sent to prison out of this county was less in JD 82 than in JD 83.^{3/} (See Tables A and B.) This is true both of Public Defender cases and of private counsel cases.

(2) Proposition 8 is not causing defendants to be sentenced to prison for longer periods. As Table C demonstrates, there was a greater number of 4 and 5+ years terms during JD 81 than in JD 82.

(Although the Tables do not specify terms five years or more, our research has not found that unusually terms (e.g. 15, 20, 30) were meted out with any greater frequency during JD 82 than in JD 81.)

(3) During the six months after Proposition 8, felony plea bargaining was conducted in great volume in the Municipal Court, with the result that 40% of all cases coming the Superior Court arose through pleas of guilty to felonies in the Superior Court (certified pleas).

Proposition 8 did restrict plea bargaining in certain designated felonies after an information or indictment was filed. But this did not prevent the defendant or the prosecutor from plea bargaining before the indictment or the information was filed, in other words in the Municipal Court.

However, it is doubtful that Proposition 8 brought about or even accelerated large-scale plea bargaining in the Municipal Court in San Francisco. As Table A indicates, certified pleas

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The figures for January and February 1983 also show no upward trend in state prison commitments or in length of prison trends.

were even growing during JD 81. In July 1981 they represented 9% of all Superior Court cases closed during that month. By the end of the year, they had already risen to 21% of the Superior Court sentencing caseload. Second, as Table E shows, in the six months immediately before Proposition 8, the number of arraignments dropped dramatically from when compared to the previous six month period (from 1428 to 1097). Yet the number of sentences in those six month periods stayed the same (1610 to 1559). The difference can be explained by the greater utilization of the Municipal Court as a plea bargaining forum for felony cases.

A final point less than half of the cases certified to the Superior Court from the Municipal Court fall into the designated serious felony category, for which plea bargaining is prohibited by Proposition 8.

We can only conclude that the plea bargaining of felony cases in the Municipal Court was in high gear before Proposition 8 took effect. If the practice did anything, it accommodated lawyers in getting around Proposition 8's restrictions on felony plea bargaining. Can this increase in trials be attributed to the non-plea bargaining restrictions of Proposition 8? Or are these cases that prosecutors would refuse to plea bargain whether or not Proposition 8 was in effect? It is possible that Proposition 8's restriction on plea bargaining or its increased penalty provisions may be driving the defendants into trial by giving them no incentive to do otherwise. We are not prepared to make that judgment.

Some Unknowns

There are other developments which deserve comment -- (1) the increase of jury trials in the fiscal year following the passage of Proposition 8; (2) the increase in felony filings; (3) a reduction in dismissals during the period following Proposition 8's enactment.

-- As to jury trials this fiscal year (as of March 1, 1982), there have been already 89 jury trials, an average of 11 per month, whereas during the previous year with a total of 109 trials, the average was 9 per month. But this increase is slight, and we can surmise that Proposition 8 has played little or no role.

-- As Table E shows the number of cases set for preliminary hearing, dramatically increased during JD 82 (from 3,670 in January 1 - June 30, 1982 to 4801 in July 1 - December 1982). Interestingly, the ratio of felony filings to felony sentences decreased from 42% in January-June 1982 to 36.4% in January to

December, 1982. Is Proposition 8, with its limitations on the exclusionary rule and its liberal admission of prosecutorial evidence, emboldened prosecutors in San Francisco to file? We cannot say authoritatively. But we are skeptical.

-- The reduction in dismissals (from 15% of all cases in JD 81 to 9% in JD 82) may be due to the large number of certified pleas: the preliminary hearing is a device to test the mettle of cases. Although cases may survive that screening device, once in the Superior Court a prosecutor may want to discuss a weak or doubtful case rather than take it to trial. The certified plea may be giving the prosecutor a plea of guilty in cases which he might otherwise dump.

-- The reduction may also be explained by the large number of felony cases getting dismissed or reduced in the Municipal Court.

Both explanations may be valid. The extent that Proposition 8 itself has influenced the process is yet to be determined.

A Final Note:

What, then, has happened? It is our opinion that Proposition 8 is unlikely to influence the severity of sentences or the workload of the courts in San Francisco. Although we have experienced steady increases in state prison commitments since 1975, we may well have reached a point that we can send no more because the prisons are over-capacity. Those who were not the type previously sent are marginal offenders, for whom a prison sentence would be a costly and almost insane punishment. So, Proposition 8 may have come at a time that its intent was already being carried out. And whatever the hue and cry about crimes, judges and prosecutors have their own sense of what cases are worth, that is, what is an appropriate disposition. And it is in this way that the courtroom develops its own mores and checks the influence of severe legislation like Proposition 8.

Tables

Note on Abbreviations

N = number of cases

S.P. = State Prison

P = Probation

D = Dismissal, discharge, or acquittal

O = Other, i.e. state hospital, misdemeanor sentence,
C.R.C., or CYA

C = Certified plea of guilty to felony in Municipal Court

State of New York

In and for the County of ...

I, the undersigned, Judge of the ...

do hereby certify that ...

is the true and correct copy of the ...

as the same appears from the records of the ...

at ...

in witness whereof I have hereunto set my hand and the seal of the ...

Table A - Sentencing Patterns July 1 - December 1981

1. Public Defender Cases

	<u>N</u>	<u>S.P.</u>	<u>P</u>	<u>D</u>	<u>O</u>	<u>C</u>
July	161	51 (31%)	71	26	13	15 (9%)
August	170	48 (28.2%)	77	30	15	21 (12.3%)
Sept.	165	58 (35.1%)	76	23	8	26 (15.7%)
Oct.	118	32 (27.1%)	53	20	13	23 (19.4%)
Dec.	150	35 (23%)	85	21	9	32 (21%)
Total:	890	258 (29%)	430 (48%)	135 (15%)	67 (7.5%)	146 (16.4%)

2. Private Counsel Cases

	<u>N</u>	<u>S.P.</u>	<u>P</u>	<u>D</u>	<u>O</u>	<u>Cert.</u>
July	20	2	15	2	1	4
August	18	5	7	3	3	1
Sept.	22	5	10	2	4	3
Oct.	16	8	3	3	4	4
Nov.	13	5	6	1	1	5
Dec.	19	7	9	2		7
Total:	108	32 (29%)	50 (46%)	13 (12%)	13 (12%)	24 (22%)

Table B - Sentencing Patterns July 1 - December 31, 1982

1. Public Defender Cases

	<u>N</u>	<u>S.P.</u>	<u>P</u>	<u>D</u>	<u>O</u>	<u>C</u>
July	146	40 (27%)	85	4	17	46 (31%)
August	132	30 (22%)	73	16	16	52 (39%)
Sept.	166	37 (22%)	99	13	17	76 (45%)
Oct.	140	32 (23%)	79	15	19	58 (41%)
Nov.	158	37 (23%)	81	21	17	63 (39%)
Dec.	<u>191</u>	<u>54 (28%)</u>	<u>98</u>	<u>19</u>	<u>20</u>	<u>80 (42%)</u>
Total:	933	230 (24.7%)	515 (55%)	85 (9%)	88 (9%)	375 (40%)

2. Private Counsel Cases

July - December 1982

	<u>N</u>	<u>S.P.</u>	<u>P</u>	<u>D</u>	<u>O</u>	<u>C</u>
July	17	3	13	1	1	7
August	18	4	11	1	2	8
Sept.	19	3	13	3	1	5
Oct.	17	3	10	3	1	7
Nov.	18	3	10	4	1	7
Dec.	<u>19</u>	<u>1</u>	<u>16</u>		<u>2</u>	<u>7</u>
Total:	108	17 (15.8%)	73 (67.5%)	12 (11%)	8 (7%)	41 (38%)

Table C - Distribution of State Prison Sentence

1. July 1 - December 31, 1981

(a) Public Defender Cases

	<u>S.P. Distribution</u>				
	<u>8-12-16</u>	<u>2-28m</u>	<u>3</u>	<u>4</u>	<u>5</u>
July	7	24	11	3	6
August	9	16	8	6	9
Sept.	12	22	14	2	8
Oct.	5	11	8	3	5
Nov.	6	16	7	1	4
Dec.	6	14	7	5	3
Total:	45 (17.4%)	87 (40%)	55 (21%)	20 (7.7%)	35 (13.5%)

(b) Private Counsel Cases

	<u>S.P. Distribution</u>			
<u>8-12-16</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5+</u>
4	8	5	4	11

2. July 1 - December 31, 1982

(a) Public Defender Cases

	<u>S.P. Distribution</u>				
	<u>8-12-16</u>	<u>2-28m</u>	<u>3</u>	<u>4</u>	<u>5</u>
July	15	17	6	1	1
August	7	8	5	2	8
Sept.	8	13	8	5	3
Oct.	8	12	8	3	1
Nov.	13	11	7	1	5
Dec.	21	13	7	4	9
Total:	72 (31%)	74 (32%)	41 (17.8%)	16 (6.9%)	27 (11.7%)

(b) Private Counsel Cases

	<u>S.P. Distribution</u>			
<u>8-12-16</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5+</u>
3	8	5	4	7

Table E - Felony Workload Patterns 1978-1982

CASES SET FOR PRELIMINARY HEARING

1-06-78	2,524
7-12-78	2,614
1-06-79	2,810
7-12-79	3,713
1-06-80	3,466
7-12-80	3,568
1-06-81	3,816
1-06-82	3,670
7-12-82	4,801

FELONY ARRAIGNMENTS

1-06-78	1,269
7-12-79	1,283
1-06-79	1,337
7-12-79	1,208
1-06-80	1,464
7-12-80	1,434
1-06-81	1,820
7-12-81	1,428
1-06-82	1,097
7-12-82	1,023

SUPERIOR COURT SENTENCES

1-06-77	1,381
7-12-77	1,226
1-06-78	1,305
7-12-78	1,520
1-06-79	1,467
7-12-79	1,372
1-06-80	1,552
7-12-80	1,428
1-06-81	1,587
7-12-81	1,610
1-06-82	1,559
7-12-82	1,748

Table E - Family Income Patterns 1972-1982

CASES SET FOR PRELIMINARY HEARING

1-02-72	2,524
1-12-72	2,514
1-01-73	2,610
1-12-73	2,711
1-02-80	2,404
1-12-80	2,404
1-02-81	2,414
1-02-82	2,410
1-12-82	2,401

ELIGIBLE FOR HEARING

1-02-78	1,429
1-12-78	1,428
1-02-79	1,417
1-12-79	1,409
1-02-80	1,401
1-12-80	1,412
1-02-81	1,420
1-12-81	1,438
1-02-82	1,437
1-12-82	1,413

ELIGIBLE FOR COURT SERVICE

1-02-77	1,161
1-12-77	1,136
1-02-78	1,132
1-12-78	1,130
1-02-79	1,147
1-12-79	1,112
1-02-80	1,122
1-12-80	1,129
1-02-81	1,127
1-12-81	1,120
1-02-82	1,124
1-12-82	1,144

P.D. CASES FY 82-83

	<u>N</u>	<u>Certs.</u>	<u>S.P.</u>	<u>Prob.</u>	<u>Dis.</u>	<u>O</u>
July	146	46 (31%)	40 (27.3%)	85	4	17
August	132	52 (39.3%)	30 (22%)	73	13	16
Sept.	166	76 (45%)	37 (22%)	99	13	17
Oct.	140	58 (41.4%)	32 (22.8%)	79	15	19
Nov.	158	63 (39%)	37 (23%)	81	21	17
Dec.	<u>191</u>	<u>80 (41.8%)</u>	<u>54 (28.2%)</u>	<u>98</u>	<u>19</u>	<u>20</u>
Total:	933	385 (40%)	230 (24.7%)	515	85	106

CERTIFICATIONS

	<u>S.P. Pleas</u>	<u>% S.P. Certs. of All Certs.</u>	<u>% S.P. Certs. of All Cases</u>	<u>P. 8 Cases Certified</u>
July	14	30%	10%	---
Aug.	9	17%	12.8%	43%
Sept.	17	22.3%	10.2%	---
Oct.	14	24%	10%	43%
Nov.	13	20%	8%	40%
Dec.	34	42%	17.9%	48%



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U.S. CITIES BY STATE

U	State	Pop.	Area	Pop.	Area
11	Ala.	1,000,000	51,121	1,000,000	51,121
12	Ark.	1,000,000	53,121	1,000,000	53,121
13	Cal.	1,000,000	55,121	1,000,000	55,121
14	Col.	1,000,000	57,121	1,000,000	57,121
15	Conn.	1,000,000	59,121	1,000,000	59,121
16	Del.	1,000,000	61,121	1,000,000	61,121
17	Fla.	1,000,000	63,121	1,000,000	63,121
18	Ga.	1,000,000	65,121	1,000,000	65,121
19	Idaho	1,000,000	67,121	1,000,000	67,121
20	Ill.	1,000,000	69,121	1,000,000	69,121
21	Ind.	1,000,000	71,121	1,000,000	71,121
22	Iowa	1,000,000	73,121	1,000,000	73,121
23	Kan.	1,000,000	75,121	1,000,000	75,121
24	Kent.	1,000,000	77,121	1,000,000	77,121
25	Louis.	1,000,000	79,121	1,000,000	79,121
26	Maine	1,000,000	81,121	1,000,000	81,121
27	Maryl.	1,000,000	83,121	1,000,000	83,121
28	Mass.	1,000,000	85,121	1,000,000	85,121
29	Mich.	1,000,000	87,121	1,000,000	87,121
30	Minn.	1,000,000	89,121	1,000,000	89,121
31	Miss.	1,000,000	91,121	1,000,000	91,121
32	Mont.	1,000,000	93,121	1,000,000	93,121
33	Nebr.	1,000,000	95,121	1,000,000	95,121
34	Nev.	1,000,000	97,121	1,000,000	97,121
35	N.H.	1,000,000	99,121	1,000,000	99,121
36	N.J.	1,000,000	101,121	1,000,000	101,121
37	N.M.	1,000,000	103,121	1,000,000	103,121
38	N.Y.	1,000,000	105,121	1,000,000	105,121
39	Ohio	1,000,000	107,121	1,000,000	107,121
40	Ore.	1,000,000	109,121	1,000,000	109,121
41	Penn.	1,000,000	111,121	1,000,000	111,121
42	R.I.	1,000,000	113,121	1,000,000	113,121
43	S.D.	1,000,000	115,121	1,000,000	115,121
44	Tenn.	1,000,000	117,121	1,000,000	117,121
45	Texas	1,000,000	119,121	1,000,000	119,121
46	Utah	1,000,000	121,121	1,000,000	121,121
47	Verm.	1,000,000	123,121	1,000,000	123,121
48	Virgin.	1,000,000	125,121	1,000,000	125,121
49	Wash.	1,000,000	127,121	1,000,000	127,121
50	West Vir.	1,000,000	129,121	1,000,000	129,121
51	Wis.	1,000,000	131,121	1,000,000	131,121
52	Wyom.	1,000,000	133,121	1,000,000	133,121

U.S. CITIES BY STATE

U	State	Pop.	Area	Pop.	Area
11	Ala.	1,000,000	51,121	1,000,000	51,121
12	Ark.	1,000,000	53,121	1,000,000	53,121
13	Cal.	1,000,000	55,121	1,000,000	55,121
14	Col.	1,000,000	57,121	1,000,000	57,121
15	Conn.	1,000,000	59,121	1,000,000	59,121
16	Del.	1,000,000	61,121	1,000,000	61,121
17	Fla.	1,000,000	63,121	1,000,000	63,121
18	Ga.	1,000,000	65,121	1,000,000	65,121
19	Idaho	1,000,000	67,121	1,000,000	67,121
20	Ill.	1,000,000	69,121	1,000,000	69,121
21	Ind.	1,000,000	71,121	1,000,000	71,121
22	Iowa	1,000,000	73,121	1,000,000	73,121
23	Kan.	1,000,000	75,121	1,000,000	75,121
24	Kent.	1,000,000	77,121	1,000,000	77,121
25	Louis.	1,000,000	79,121	1,000,000	79,121
26	Maine	1,000,000	81,121	1,000,000	81,121
27	Maryl.	1,000,000	83,121	1,000,000	83,121
28	Mass.	1,000,000	85,121	1,000,000	85,121
29	Mich.	1,000,000	87,121	1,000,000	87,121
30	Minn.	1,000,000	89,121	1,000,000	89,121
31	Miss.	1,000,000	91,121	1,000,000	91,121
32	Mont.	1,000,000	93,121	1,000,000	93,121
33	Nebr.	1,000,000	95,121	1,000,000	95,121
34	Nev.	1,000,000	97,121	1,000,000	97,121
35	N.H.	1,000,000	99,121	1,000,000	99,121
36	N.J.	1,000,000	101,121	1,000,000	101,121
37	N.M.	1,000,000	103,121	1,000,000	103,121
38	N.Y.	1,000,000	105,121	1,000,000	105,121
39	Ohio	1,000,000	107,121	1,000,000	107,121
40	Ore.	1,000,000	109,121	1,000,000	109,121
41	Penn.	1,000,000	111,121	1,000,000	111,121
42	R.I.	1,000,000	113,121	1,000,000	113,121
43	S.D.	1,000,000	115,121	1,000,000	115,121
44	Tenn.	1,000,000	117,121	1,000,000	117,121
45	Texas	1,000,000	119,121	1,000,000	119,121
46	Utah	1,000,000	121,121	1,000,000	121,121
47	Verm.	1,000,000	123,121	1,000,000	123,121
48	Virgin.	1,000,000	125,121	1,000,000	125,121
49	Wash.	1,000,000	127,121	1,000,000	127,121
50	West Vir.	1,000,000	129,121	1,000,000	129,121
51	Wis.	1,000,000	131,121	1,000,000	131,121
52	Wyom.	1,000,000	133,121	1,000,000	133,121